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FILED

OCT 28 1944

CHARLES ELMORE ORPLEY
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IN THE
Supreme Court of the United States

OCTOBER TERM 1944

No. 638-639

HUNTMAN STABILIZER CORPORATION,
Petitioner,

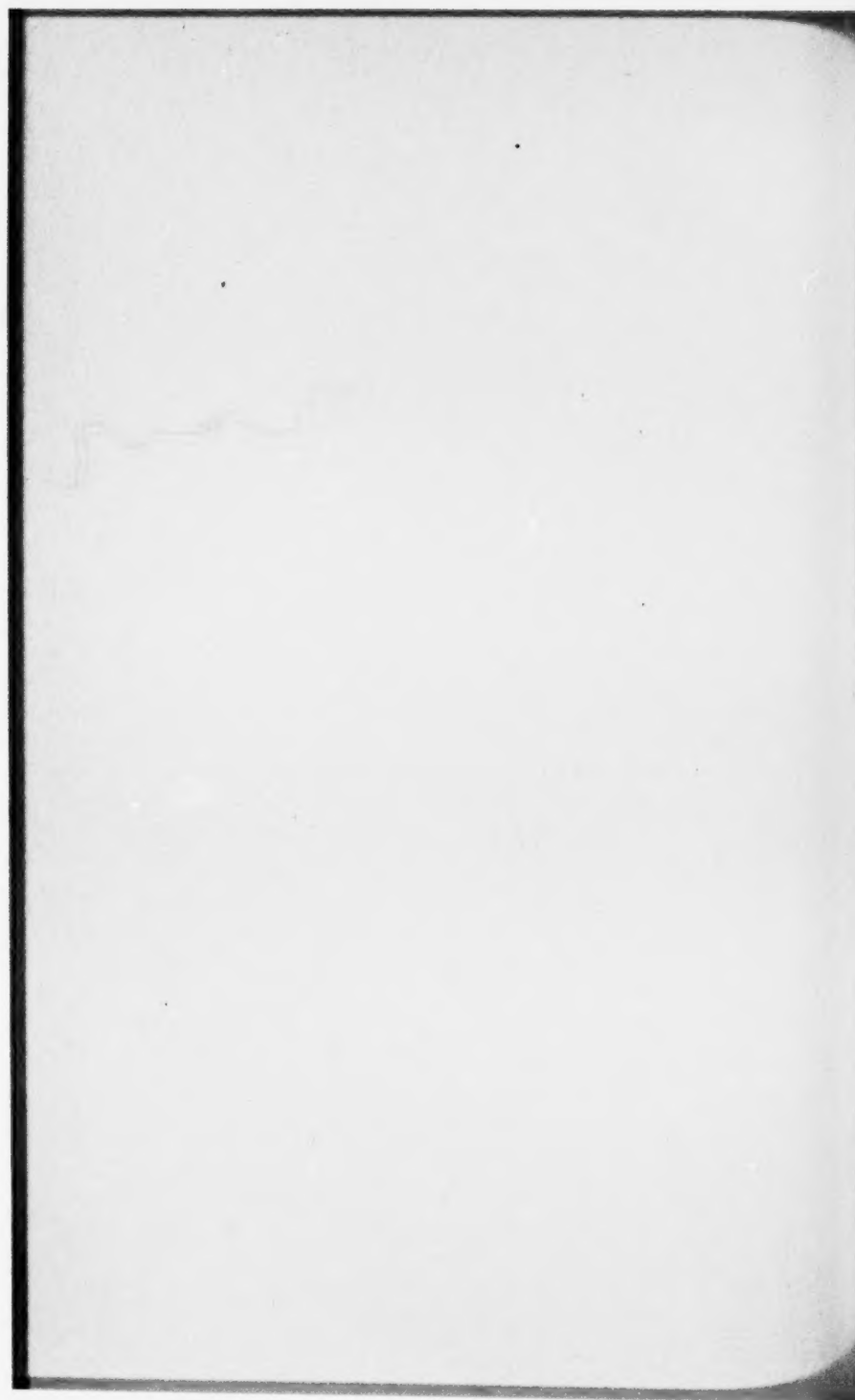
v.

GENERAL MOTORS CORPORATION,
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD
CIRCUIT AND BRIEF IN SUPPORT THEREOF**

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IN THE
Supreme Court of the United States

OCTOBER TERM 1944

HUNTMAN STABILIZER CORPORATION,
Petitioner,
v.

GENERAL MOTORS CORPORATION,
Respondent.

PETITION FOR WRIT OF CERTIORARI

**To the United States Circuit Court of Appeals for the
Third Circuit.**

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATED JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioner, Huntman Stabilizer Corporation, respectfully prays for a Writ of Certiorari to the Circuit Court of Appeals for the Third Circuit, to review Judgments in that court entered August 31, 1944. A transcript of the record in the case, including the proceedings in said Circuit Court of Appeals, is furnished herewith in accordance with Rule 38 of the Rules of this Court.

**Summary and Short Statement of the Matter
Involved**

This action was brought by Huntman Stabilizer Corporation in the District Court of the United States for the

District of New Jersey to enjoin the infringement of claims 1, 2, 3 and 4 of Letters Patent No. 1,971,957 for Stabilizing Shock-Absorbing Apparatus for Motor Vehicles; claims 1 and 2 of Letters Patent No. 1,971,958 for Method of Stabilizing Automobiles While in Motion; claims 1 and 2 of Letters Patent No. 1,971,959 for Equalizing and Shock-Absorbing Means for Vehicles, and claim 6 of Letters Patent No. 1,971,960 for Combined Cross-bar Equalizing and Shock-Absorbing Means for Vehicles.

Three forms of infringement were in evidence known as "Oldsmobile", "Chevrolet" and "Buick". The District Court (Hon. James Alger Fee) held the claims of the above patents in suit valid and infringed by the "Oldsmobile", but found the evidence insufficient in the "Chevrolet" and "Buick" forms to prove infringement, but that infringement might be shown by further evidence (Reported in 53 Fed. Supp. 43).

An appeal was taken by respondent to the United States Circuit Court of Appeals for the Third Circuit from the judgment of the District Court holding the patents valid and infringed by "Oldsmobile" and a cross appeal was taken by petitioner from the judgment holding the evidence insufficient to prove infringement by "Buick" and "Chevrolet". The Circuit Court reversed the judgment of the District Court on respondent's appeal and affirmed the judgment on petitioner's appeal. The opinion of the District Court and the Findings of Fact and Conclusions of Law are found in the Record at pages 274, 284. The opinion of the Circuit Court will be found in the Record at page 585.

All of the patents in suit relate to the combination of a pair of recoil check, or snubber, shock absorbers, one on each side of a motor vehicle between the chassis and the axle, and a connecting means between the shock absorbers constraining them to act together so that the shocks and recoils, due to the vehicle traveling at high

speeds, are distributed between them. Combining the shock absorbers enabled lighter, softer, springs to be used without sacrificing the stability of the vehicle and improved its riding qualities.

The claims of the first two patents in issue define the connecting means broadly (Exhibits P1, P2, Record opposite pp. 56a, 57a). The opinion of the Court of Appeals held these patents valid as a combination but restricted these claims on baseless assumptions contrary to findings of fact of the District Court which were fully supported by undisputed evidence and in which no error has been shown; has decided important questions of federal law which have not been, but should be, decided by this Court, and has decided federal questions in a way probably in conflict with applicable decisions of this Court.

The last two patents define specific embodiments of the broad combination (Exhibits P3, P4, Record opposite pp. 60a, 62a). The opinion of the Circuit Court held the last two patents invalid, contrary to the District Court's findings of fact in which no error has been shown and to undisputed evidence; and decided important federal questions in a way probably in conflict with applicable decisions of this Court. The Circuit Court has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Huntman patent 1,971,957 describes the generic combination of recoil check shock absorbers and connecting means and, as an exemplification, shows hydraulic connections in which the fluid compartments of the shock absorbers on opposite sides of the car are cross connected by tubes or pipes. The claims in issue (claim 3, for example), claim the combination of recoil check shock absorbers and a connecting means. Other claims not in issue (claim 20, for example), are specific to the hydraulic connections.

Patent 1,971,958 has the same disclosures as patent 1,971,957 but the claims are method claims independent of specific mechanism.

Patent 1,971,959 discloses recoil check shock absorbers or snubbers on opposite sides of the car connected to the axle and through the axle connected by links to arms at the ends of a transverse rock shaft or rod mounted on the body or chassis. The rod thus connects one shock absorber directly with the other and distributes or divides the shock or recoil. The claims in issue (claims 1 and 2) are specific to the cross-bar connection.

Respondent's attorneys conceded that these patents all operate on the same principle (Record, p. 48a).

Patent 1,971,960 shows a transverse shaft or bar connected at its ends to hydraulic, recoil check, shock absorbers on opposite sides of the vehicle. The single claim in issue (claim 6) is specific to the hydraulic shock absorbers and the connecting bar.

All the patents issued on the same day.

The inventor, Huntman, made the first embodiment of his invention in the Spring of 1923 (Record, p. 486) by placing on a small Durant car a cross-bar having two arms, one at each end, and a linkage connecting each arm to the axle and then installing on the car two Watson shock absorbers and attaching their straps to the same points on the axle to which the links were connected. The Watson was a snubber or recoil check shock absorber. This construction was that shown in the third patent, 1,971,959.

In January 1924, Huntman mounted on the rear of a Flint car a pair of Houdaille hydraulic shock absorbers and connected them by a cross-bar having sockets on its opposite ends engaging the shafts of the shock absorbers, as shown in the fourth patent 1,971,960 (Record, p. 488).

This construction could not be installed on the front end of the car because the lower part, or pan, of the engine would be in the way of the cross-bar. Huntman, late in the Summer of 1924, overcame this obstacle by an hydraulic connection in which the fluid compartments of the shock absorbers on opposite sides of the car were cross connected by tubes or pipes as shown in the first two patents 1,971,957 and 1,971,958 (Record, p. 490).

The car with these connections between the shock absorbers was demonstrated to an engineer in respondent company on whose advice a model was sent to respondent for testing (Record, p. 492). Respondent, in November 1925, reported that this model did not come up to the expectations of its engineers who compared it with devices that respondent was developing for future use (Exhibit P-16, Record, p. 64a). Huntman then tried to put his inventions on the market as shown by the testimony, and filed additional patent applications showing the prior embodiments of the invention (Record, p. 500).

Late in 1933 respondent announced the adoption of the Oldsmobile type of shock absorber connection and Huntman's patent attorney immediately notified respondent of Huntman's patent applications, and of respondent's infringement thereof, and offered a license. Further efforts were made through Henry Herbermann, counsel for petitioner, but terminated when Mr. Herbermann joined the legal staff of respondent (Record, pp. 501-502).

The Oldsmobile construction has a cross-bar connected at its ends by bolts to hydraulic recoil check shock absorbers and is, therefore, substantially identical with the Huntman construction shown in patent 1,971,960 (Stipulation Record, pp. 6a, 7a, and Exhibit P-8, Record, p. 83a).

The Chevrolet and Buick were later constructions employing a cross-bar having arms at its ends connected to the axle or wheel carrying elements to which hydraulic re-

coil check shock absorbers are connected as in Huntman's earliest construction shown in patent 1,971,959. (Stipulation, pp. 7a, 8a and Exhibits P-9, P-10, Record, pp. 85a, 87a.)

Respondent installed these mechanisms on over six million of its cars, four and one-half million being installed since February 1, 1938 to the date of the suit (Record, pp. 324, 325). They are a valuable feature of passenger automobiles.

Proof of the infringing acts was by stipulation comprising diagrammatic charts and descriptions. The Oldsmobile shock absorbers and the connecting rod bolted thereto were also in evidence as a part of the stipulation. Only the connecting rods and links of the Chevrolet and the Buick were in evidence:—it would have required the chassis and running gear to show their connection to the shock absorbers. There was, however, other evidence that showed the construction of Chevrolet and of Buick complete in every detail.

Among the prior art, respondent's evidence was primarily directed to a linkage known as the "Adex" between the chassis or sills of the body and the axle as shown in "La Vie Automobile" of November 24, 1922 (Record, p. 559). A model was demonstrated by respondent to show that this linkage would give the vehicle a stabilizing effect, equal to, or greater than, that obtained by a transverse torsion rod or shaft such as that used in the accused mechanisms. It was admitted by respondent's witness that this effect was obtained indirectly by the action of the linkage on the springs, giving the springs a resistance to unequal flexing without otherwise stiffening them (Record, p. 44a). If shock absorbers were used on a vehicle having the Adex linkage the same end might be obtained indirectly as was obtained by the Huntman connection of the two shock absorbers.

None of the prior art showed the combination of shock absorbers and connecting means. A patent to Ezell 260,960 of 1882 (Record, p. 366), which showed no shock absorbers, was mentioned by the District Court (Record, p. 278) as being otherwise the closest approach to cross-bar stabilization.

The District Court found (Record, p. 285, par. 4) that Huntman had experimented as early as 1923 with a bar connected to the shock absorbers, a fact fully supported by the evidence; that patents 1,971,957 and 1,971,958 were not limited to the form exemplified therein but covered all direct connections of the shock absorbers (Record, p. 286, par. 11), (but not indirect means as in the Adex); that all of the patents in issue herein were valid and were infringed by the Oldsmobile (Record, p. 286, par. 13) but, referring solely to the stipulations, that the evidence was insufficient to prove infringement by Buick and Chevrolet and that infringement might be shown by further evidence (Record, pp. 283, 287, par. 14).

The opinion of the Circuit Court held patents 1,971,957 and 1,971,958 valid, therefore not an aggregation, but limited them to the exemplified hydraulic connection on the following grounds:

1. That the shock absorbers interconnected hydraulically by the cross tubes was the device that Huntman first installed upon a car (Record, p. 589). This is directly contrary to the finding of the District Court based on undisputed evidence taken in open court that Huntman first installed the cross bar connection early in 1923. There is no evidence in support of the Circuit Court's opinion nor does it point out any error in the District Court's findings. If this action of the Circuit Court is the accepted and usual course of judicial proceedings, Rule 52a of the Rules of Civil Procedure is meaningless. The fact of this early installation is material to the scope of the patent:

Morey v. Lockwood, 75 U. S. 230, 242.

2. That these patents disappear from the picture unless the claims therein support the granting of the two subsequent patents as part of the field preempted by the application for patent 1,971,957 (Record, p. 589). This manner of disposing of the question of infringement, or any question involved in this case, is clearly without precedent and without basis in the statutes or decisions of this court. The granting of subsequent patents is in no way dependent on the scope of claims in an earlier patent nor on the field covered by the claims of an earlier patent. The claim measures the invention of the patent, *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405, 419. Whether a subsequent patent, or patents, comes within its scope is immaterial to the validity of either.

3. That the claims of these patents encompass every equalizing mechanism for stabilizing wheeled running gear and equalizing vertical displacing shock on one side with the other; that the claims monopolize for the patentee the entire field of the problem, and that to allow patentee now to claim every means for equalizing the strain on both sides of vehicles would allow him to extend his invention to include the prior art (Record, p. 591). This is contrary to the evidence and to the findings of the District Court. The "Adex" linkage was shown by respondent's testimony and model to accomplish equal or greater stability by its reaction on the springs without connecting the shock absorbers. The District Court found that the claims of patents 1,971,957 and 1,971,958 do not include this indirect effect of the "Adex" linkage. The Circuit Court has shown no error in this finding. The claims of these patents cover the *combination* of recoil check shock absorbers *specifically* and a connecting means *generally*. They do not, in terms or in effect, cover *every* equalizing means and stabilizing means.

4. That what the patentee really has offered is an hydraulically connected shock absorbing combination (Rec-

ord, p. 591). This is tantamount to saying that the patentee must be limited to the specific exemplifications of his patent specifications even though, as found by the District Court he had made other embodiments. This is in conflict with applicable decisions of this Court:

Mowry v. Whitney, 81 U. S. 620;

Keystone v. Adams, 151 U. S. 139;

Continental Paper Bag Co. v. Eastern Paper Bag Co., 210 U. S. 405;

Hildredth v. Mastoras, 257 U. S. 27;

Smith v. Snow, 294 U. S. 1, 14.

5. That the claims are so broad as to prevent future possible inventions (Record, p. 591). This is error, for as found by the District Court the claims of these patents cover broadly only the means for connecting the shock absorbers and do not cover all stabilizing means such as the "Adex". If other means should be invented for accomplishing the same end or result they would be outside the scope of these claims. The Circuit Court's statement is in probable conflict with applicable decisions of this Court which hold that in determining whether an invention has been anticipated by an earlier patent, the question is not what is the precise scope of the claims in the earlier patent, but what is disclosed in the specification and made known to the world:

Minerals Separation N. A. Corp. v. Magma Copper Co., 280 U. S. 400, 402.

6. That the problem Huntman worked on was one common to motor car manufacturers which they were endeavoring to solve. As a ground for limiting the scope of claims this is in conflict with long established precedents. Invention does not lie in the perception of an end to be accomplished or of a want to be satisfied. The creative act of invention lies solely in the idea of a means to ac-

comply with the end or satisfy the want—*Robinson on Patents*, Vol. 1, page 133. The existence of the end or want to be satisfied and the desire and unsuccessful efforts of others to satisfy it in no way limit or anticipate the idea of means of a successful inventor.

On these grounds alone the Circuit Court held these patents not infringed.

In restricting the claims in issue to hydraulic connections, the Circuit Court has made them the same in scope and substance as other more limited claims of the patent and has, in effect, rewritten the patent contract. This is in conflict with applicable decisions of this Court.

Smith v. Snow, 294 U. S. 1, 13, 14;

Symington v. National Malleable Castings Co.,
250 U. S. 383, 385.

The Circuit Court's opinion held patents 1,971,959 and 1,971,960 invalid on the following grounds:

1. Because they were not applied for until after respondent had announced the appearance of the accused structures. But this announcement was within two years of the filing date of the patents and was later than Huntman's dates of invention, which the evidence showed and the District Court found, to be in 1923 and 1924, and does not constitute an anticipation under the statutes, R. S. 4886. U. S. Code title 35, sec. 31.

2. That they cannot be sustained unless they are to be classed as further embodiments of patent 1,971,957. As a ground for invalidating a patent this is without basis in the statutes or in any decision of this Court. That a patent cannot be sustained unless it be an embodiment of another patent raises an important question of federal law which has not been, but should be, settled by this Court.

3. That these patents are anticipated by a patent to Goyne 1,568,561, January 5, 1926 (Record, p. 370). This is

purely a question of fact. The District Court did not find this patent to be an anticipation. It discloses merely a rotatable rock shaft having leaf springs or spring arms secured thereon at the opposite ends and extending into and tightly fitting a recess on the axle so that there can be no relative movement of the axle and body, or chassis, without flexing these spring arms. If shock absorbers were mounted in any manner that would permit the functioning of the Goyne device they would not be connected as in the Huntman patents.

The Circuit Court's decision on petitioner's appeal was based on its restriction of the scope of the first two patents to hydraulic connections and its finding of invalidity of the last two. Unless it is sustained on these findings it has not decided the question of the sufficiency of the proofs as to Buick and Chevrolet. If not sustained on these findings, petitioner will have been denied the right to an appeal and unless a finding of infringement or non-infringement were made on the evidence it would mean that no documentary and oral evidence, no matter how complete, short of the production of the infringing machines or apparatus in court, would be sufficient proof of infringement.

Petitioner's contentions may be briefly summarized as follows:

1. The Opinion of the Circuit Court in reversing without any supporting evidence or showing of error a finding of fact of the District Court based on adequate, undisputed, evidence is such a departure from rule 52a of the Rules of Civil Procedure as to call for an exercise of this Court's power of supervision.

2. The opinion of the Circuit Court in restricting the claims of patents 1,971,957 and 1,971,958 is in conflict with applicable decisions of this Court as to each of the several grounds of the opinion.

3. The opinion of the Circuit Court in holding patents 1,971,959 and 1,971,960 invalid is in probable conflict with applicable decisions of this Court and, as to certain grounds, without any basis in the statutes.

4. The Circuit Court has made no decision on the question of the sufficiency of evidence of infringement by Buick and Chevrolet raised by petitioner's appeal.

5. The inventions are of great importance to the automotive industry and a decision on the scope and validity of the patents in issue based on the established precedents of this Court would be desirable.

6. Patents 1,971,957 and 1,971,958 disclosed the shock absorber connecting means broadly as claimed and not merely the hydraulic connections exemplified.

Jurisdiction

This is a suit arising under the Patent Laws of the United States, Judicial Code, Section 24 (7), 28 U. S. C., Sec. 41.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1924 (28 U. S. C., Sec. 347).

The Judgments your petitioner seeks to have reviewed are dated August 31, 1944, the date of entry of the Judgments in the Circuit Court of Appeals.

The Mandate has been stayed by Order of the Circuit Court of Appeals to permit the filing of this petition for Writ of Certiorari.

Questions Involved

(1) Are the Huntman patents 1,971,957; 1,971,958; 1,971,959 and 1,971,960 valid and infringed by the accused mechanisms?

(2) Did the Court of Appeals, in adjudging the claims in issue of patents 1,971,957 and 1,971,958 limited to the hydraulic connections exemplified in the patents and defined in more specific claims in patent 1,971,957, misinterpret and misapply the principles governing invention and the rights of patentees as announced by this Court in the cases of:

Keystone v. Adams, 151 U. S. 139;
Continental Paper Bag Co. v. Eastern Paper Bag Co., 210 U. S. 405;
Hildreth v. Mastoras, 257 U. S. 27;
Smith v. Snow, 294 U. S. 1, 14.

3. Was the judgment of the Circuit Court, holding patents 1,971,959 and 1,971,960 invalid, without basis in fact and law?

4. Did the Circuit Court in reversing the District Court on material questions of fact fully supported by undisputed evidence taken in open court and without showing any error therein so far depart from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision?

Your petitioner submits that these questions should all be answered in the affirmative; and respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the Third Circuit commanding such Court to certify and send to this Court, on a date to be designated, a full transcript of the Record and all proceedings of the Court of Appeals had in this case; to the end that this case may be reviewed and determined by this Court; that the judgments of the Court of Appeals be reversed; and that your petitioner be granted such other and further relief as may seem proper.

Reasons Relied On For the Allowance of the Writ

1. The Circuit Court for the Third Circuit in reversing the findings of fact of the District Court fully supported by undisputed evidence taken in open court and without any showing of error in the findings or of insufficiency in the evidence, has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

2. The Circuit Court in basing its decision on a conclusion of material fact in direct conflict with the evidence and with no evidence in support of its conclusion has made a patently erroneous judgment for which there is no remedy other than by a review by this Court.

3. The Circuit Court has decided important questions of federal law in a way probably in conflict with applicable decisions of this Court and which should, therefore, be reviewed by this Court.

4. Valuable patent rights of petitioner have been impaired or destroyed by the decision of the Circuit Court on the basis of erroneous assumptions and conclusions of law and fact. It is of public interest that valid patents shall not be impaired or nullified by such decisions. Public interest is concerned not only with the suppression of unwarranted assertions of patent rights, but also with protecting the just rights of inventors and patentees as well as other property against wrongful appropriation.

Wherefore your petitioner respectfully prays for an allowance of a Writ of Certiorari.

Respectfully submitted,

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